



ACQUISITION LETTER

AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Federal Acquisition Regulation (FAR), Section 1.301(a)(2).

CONTENTS

CITATION

TITLE

FAR 19.8

Contracting with the Small Business
Administration (The 8(a) Program)

FAR 52.219-18

Notification of Competition Limited to Eligible
8(a) Concerns

FAR 52.219-70XX

Section 8(a) Direct Award

Subject: 8(a) Memorandum of Understanding

- I. **Purpose.** The purpose of this Acquisition Letter is to implement the changes to FAR made necessary by a Memorandum of Understanding (MOU) between the Department of Energy (DOE) and the Small Business Administration (SBA). The MOU provides for direct award by DOE of 8(a) contracts. A copy is at attachment 1.
- II. **Background.** On May 6, 1998, DOE and SBA entered into an MOU to streamline the 8(a) contracting process. The MOU allows DOE to contract directly with 8(a) firms and relieves SBA of nonvalue-added work in the 8(a) award process. Several other Agencies have entered into similar MOUs with SBA and, as a result, SBA is revising its regulations at 13 CFR 124. This in turn will require a revision to FAR Subpart 19.8 and Part 52. Pending a final rulemaking to the FAR, the Procurement Executive has approved a class deviation to implement the required FAR changes.
- III. **Guidance.** Contracting activities shall comply with the FAR deviations provided as an enclosure to the approved findings and determination at attachment 2. Note that SBA has delegated its authority to DOE Heads of Contracting Activities (HCA). HCAs must in turn delegate authority to Contracting Officers.

AL 98-09 (6/26/98)

Existing 8(a) contracts may be brought under the MOU procedures by tri-partite modification. Awards made in accordance with this AL do not fall within the purview of Section 302 of Pub. L.105-62 and do not require the Congressional notice specified in AL 98-02.

IV. **Effective Date.** This AL is effective on the date of issuance.

V. **Expiration Date.** This AL is effective until the 8(a) MOU changes are incorporated into the FAR unless canceled or superseded prior to that date.

MEMORANDUM OF UNDERSTANDING

between the

U.S. SMALL BUSINESS ADMINISTRATION

and the

U.S. DEPARTMENT OF ENERGY

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) between the U.S. Small Business Administration (SBA) and the U.S. Department of Energy (DOE) is to establish streamlining procedures for expediting the award of requirements pursuant to Section 8(a) of the Small Business Act (15 USC 637(a) as amended), hereinafter referred to as "the Act." An objective of this initiative is to streamline the procurement process; thereby, making the system more efficient and responsive to the needs of DOE.

II. OBJECTIVES

The objective of this memorandum of understanding is to provide procedures that are intended to:

- A. Reduce the interval between the time DOE sends an offering letter to SBA and SBA's acceptance of the offering to a maximum of five (5) working days; and
- B. Eliminate SBA's approval of contracts executed under authority of this MOU.

III. SCOPE

This MOU provides for the award of both contracts and purchase orders under the provisions of Section 8(a) of the Act as implemented by the Federal Acquisition Regulation (FAR) (48 CFR) and SBA's Minority Enterprise Development Program Regulations (13 CFR 124).

This MOU encompasses all competitive and non-competitive acquisitions offered by the DOE and accepted by the SBA into the 8(a) program, including but not limited to: Acquisition of Commercial Items (FAR Part 12), awards under Simplified Acquisition Procedures (FAR Part 13), awards resulting from Sealed Bids (FAR Part 14), Contracting by Negotiation (FAR Part 15), and Construction and Architect-Engineering Services (FAR Part 36).

This MOU shall apply to all SBA field offices throughout the United States, and all DOE Heads

of Contracting Activities which currently includes the following:

Albuquerque Operations Office
U.S. Department of Energy
P.O. Box 5400
Albuquerque, NM 87115

Golden Field Office
U.S. Department of Energy
1617 Cole Boulevard
Golden, CO 80401

Nevada Operations Office
U.S. Department of Energy
P.O. Box 98518
Las Vegas, NV 89193

Oak Ridge Operations Office
U.S. Department of Energy
P.O. Box 2000
Oak Ridge, TN 37381

Richland Operations Office
U.S. Department of Energy
P.O. Box 550
Richland, WA 99352

Savannah River Operations
Office
U.S. Department of Energy
P.O. Box A
Aiken, SC 29802

Federal Energy Technology Ctr.
U.S. Department of Energy
P.O. Box 880
Morgantown, WV 26505

P.O. Box 10940
Pittsburgh, PA 15236

Chicago Operations Office
U.S. Department of Energy
9800 S. Cass Avenue
Argonne, IL 60439

Idaho Operations Office
U.S. Department of Energy
785 DOE Plaza
Idaho Falls, ID 83402

Oakland Operations Office
U.S. Department of Energy
1301 Clay Street, Rm. 700-N
Oakland, CA 94612

Ohio Field Office
U.S. Department of Energy
P.O. Box 398705
Cincinnati, OH 45139

Rocky Flats Office
U.S. Department of Energy
P.O. Box 328
Golden, CO 80402

Strategic Petroleum
Reserve Project Office
U.S. Department of Energy
900 Commerce Road, East
New Orleans, LA 70123

Pittsburgh Naval
Reactors Office
U.S. Department of Energy
814 Pittsburgh McKeesport Blvd.
West Mifflin, PA 15122-0109

Schenectady Naval Reactors
Office
U.S. Department of Energy
2401 River Road
Schenectady, NY 12309

Southwestern Power
Administration
U.S. Department of Energy
P.O. Box 1619
Tulsa, OK 74101

Western Area Power
Administration
U.S. Department of Energy
P.O. Box 3402
Golden, CO 80401-0098

Office of Headquarters
Procurement Operations (HR-54)
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Southeastern Power
Administration
U.S. Department of Energy
Samuel Elbert Building
Elberton, GA 30635-2496

All DOE contracting offices will conduct 8(a) awards under currently established practice as defined in the FAR.

IV. RESPONSIBILITIES

A. The Administrator of the Small Business Administration hereby delegates to the DOE Heads of Contracting Activities, and any other activities mutually agreed to by DOE and SBA and added through amendment to this MOU, with specific authority to re-delegate to warranted DOE contracting officers, as appropriate, SBA's authority under Section 8(a)(1)(A) of the Act to enter into 8(a) contracts and its authority under Section 8(a)(1)(B) of the Act to subcontract the performance of that contract to an eligible 8(a) Program Participant (hereinafter referred to as "8(a) Participant.").

B. The Small Business Administration agrees to:

1. Establish and implement uniform procedures for use by all SBA field offices in conjunction with this MOU. As a minimum, these procedures shall inform the field offices of this MOU and establish a procedure for issuing an SBA acceptance letter of 8(a) requirements within five (5) working days from the time the SBA receives an offer letter from one of the designated DOE procurement offices;
2. Review the DOE's offer letter and issue an acceptance letter, where appropriate, within five (5) working days of receipt. If an offer letter has not been accepted within the five (5) working day time frame, DOE procurement offices may assume acceptance of the 8(a) acquisition has been granted and may proceed with the procurement process. Acceptance

goes to all elements of eligibility (e.g., determinations of adverse impact, Standard Industrial Classified (SIC) code appropriateness, and program eligibility). SBA will make a final determination of size eligibility for the procurement as of the date of the Participant's initial offer which includes price; SBA will also provide a requirement number;

3. Continue to provide 8(a) Participants with assistance on proposal development and/or contract negotiations when requested; and
4. Continue to select an appropriate 8(a) Participant when the DOE submits an "open" offer letter for a sole source requirement;

C. The aforesaid delegation and commitments of paragraphs A and B above do not affect the Small Business Administration's:

1. Right to appeal contract disagreements to the Secretary of the DOE on behalf of the Participant pursuant to 13 CFR 124.320(b);
2. Right to perform on-site contract surveillance reviews at DOE participating contracting offices to ensure compliance with this MOU and applicable regulations, identify problems, and recommend corrective action; and
3. Right to withdraw any delegation issued as a result of this MOU.

D. The Department of Energy agrees that it shall:

1. Continue to determine which requirements are suitable to be offered to the 8(a) program in accordance with FAR Subpart 119.8, and, where appropriate, identify 8(a) Participants capable of performing these requirements;
2. Continue to submit the offer letter for new sole source requirements to the SBA's servicing District Office having cognizance of the selected 8(a) Participant;
3. Continue to submit the "open" offer letter to the SBA field office that services the geographical area where the DOE buying activity is located for sole source requirements when an 8(a) Participant has not been selected for a requirement;
4. Continue to submit the offer letter for competitive 8(a) procurements to the SBA field office that services the geographical area where the DOE buying activity is located, except that offer letters for construction work will be sent to the SBA field office located in the geographical area where the work will be performed;

5. Continue to advertise all competitive 8(a) procurements in the Commerce Business Daily in accordance with FAR 19.804-2(c) and provide a copy of the announcement to the SBA's coordinating office;
6. Ensure that all contracts awarded pursuant to this MOU contain appropriate standard FAR provisions requiring, among other things that contracting officers coordinate contract termination and novation proceedings relating to contracts executed pursuant to this MOU with the SBA prior to initiating action;
7. Submit requirements for reviews by the DOE legal counsel for determination of legal sufficiency in accordance with DOE procedures;
8. Ensure that all applicable requirements of the FAR are followed;
9. Submit a summary report of all new awards and modifications to 8(a) contracts with values over \$25,000 to the SBA's Assistant Administrator for Business Development, Office of Minority Business Enterprise, on a quarterly basis. For each individual award with action during the quarter, this report shall list the 8(a) contractor's name, performance city, county, state, and zip code; contract number, total award amount, type of award, contract beginning and completion dates; the modification number(s), kind of award action, award date, and obligations. At the end of the report, there will be total count of actions and obligations to 8(a) awards for the quarter; and
10. Include the SBA servicing District Office on contract distribution lists for all contract documents; and annotate the SBA requirement number, (pursuant to IV.B(2) of this MOU), on the initial award document only.

V. EXECUTION

Following SBA acceptance of a DOE requirement, and subsequent solicitation, as appropriate, a DOE Contracting Officer shall execute a contract (or purchase order) between the DOE and the 8(a) participant. Contract execution shall be on the appropriate award forms pursuant to the FAR including the Standard Form (SF) 26 (award of supplies/services). SF 347 (simplified acquisitions). SF 1442 (award of construction), or SF 1449 (award commercial items), as appropriate. The "Issued by" block shall identify the awarding DOE office. The cognizant SBA District office for the participant shall be identified in the award document. The participant name and address shall be listed as the contractor.

Each participating DOE contracting activity may issue the procurement instrument numbers and a single DOE signature will be used in executing the contract. A

subcontract number will not be issued.

A single DOE Contracting Officer signature shall be used in executing the contract or purchase order. (A SBA Contracting Officer signature will not be required.) The Contracting Officer's title shall include the appropriate DOE contracting activity as illustrated below:

Contracting Officer for the
(list the DOE contracting activity)

VI. MEASURE OF EFFECTIVENESS

DOE will accumulate data on 8(a) contracts over \$25,000 which will include the number of awards, total obligations and total award value for contracts. Other data will include, the name of the procurement office, the contractor's name, performance city, county, state, and zip code; type of award, product and service code, SIC code, and description of work. For 8(a) awards with values under \$25,000, DOE will collect in each quarter, the number of actions and obligations by each DOE procurement office. A separate list can be provided with addresses of DOE procurement offices if needed. Total obligations and actions will be compared to data from fiscal year 1996 which will be used as the baseline.

VII. TERM

This MOU will become effective on the date of acceptance by the SBA and will remain in effect for one year, at which time, it may be renewed by mutual agreement between SBA and DOE.

VIII. AMENDMENTS

This MOU may be amended at any time by mutual agreement of the SBA's AA/MED and the DOE's Senior Procurement Executive. Any amendments will be in writing.

IX. TERMINATION

This MOU may be terminated by either the SBA's AA/MED or the DOE's Senior Procurement Executive upon thirty (30) days advance written notice.

X. ADMINISTRATION

The following persons are points of contract for administrative matters pertaining to this MOU:

Procurement Executive
U. S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585


Acting Associate Administrator for
Minority Enterprise Development
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416


Deputy Director
Office of Small & Disadvantaged
Business Utilization
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

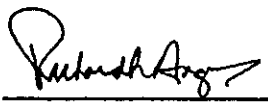
Assistant Administrator for
Business Development
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

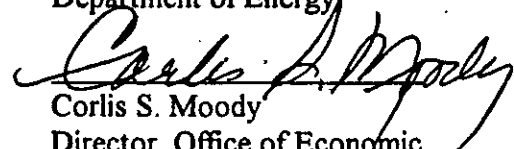
XI. ACCEPTANCE

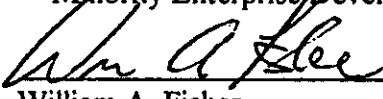
The undersigned parties hereby accept the terms of this MOU:

 MAY 6 1998
Aida Alvarez, Administrator
U.S. Small Business Administration


Richard Hopf
Deputy Assistant Secretary for
Procurement & Assistance
Management
Department of Energy

 MAY 6 1998
RICHARD J. HAYES
Associate Deputy Administrator
for Government Contracting and
Minority Enterprise Development


Corlis S. Moody
Director, Office of Economic
& Diversity
Department of Energy

 MAY 6 1998
William A. Fisher
Acting Associate Administrator for
Minority Enterprise Development

**FINDINGS AND DETERMINATION
CLASS DEVIATION
FEDERAL ACQUISITION REGULATION**

- I. **Findings.** The Department of Energy and the Small Business Administration (SBA) have entered into an Memorandum of Understanding (MOU) to streamline the award of 8(a) contracts. The MOU allows the Department of Energy (DOE) to make awards directly to eligible 8(a) concerns. SBA's signature on such contracts is not required. SBA has advised DOE that they will revise their regulations at 13 CFR 124 to reflect the 8(a) MOU.

The MOU will allow SBA to more effectively manage the 8(a) program, while maintaining and improving the level of service provided to program participants. The 8(a) program will become more timely and more effective making it a more attractive acquisition vehicle. This should result in more awards, particularly awards under \$100,000, being made to 8(a) firms.

SBA's General Counsel has determined that there is statutory authority to enter into this MOU and to delegate contract execution authority.

- II. **Determination.** On May 1, 1998, the Civilian Agency Acquisition Council (CAAC) issued letter 98-3, Direct 8(a) Contracting, recommending that civilian agencies authorize a class deviation to implement the changes to FAR Subpart 19.8 and Part 52 necessary for those agencies which have entered into an MOU with SBA for the direct award of 8(a) contracts by the requiring agency. The letter serves as evidence of consultation with the Chairman of the CAAC.

DOE proposes to deviate from the FAR by:

- (1) Modifying Subpart 19.8 to reflect the conditions of the MOU entered into between SBA and DOE; and
- (2) Modifying Part 52 to provide a new Alternate to 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, and a new clause, 52-219-70XX, Section 8(a) Direct Award.

The attachment to these findings and determination illustrates the changes which were made to FAR.

Attachment 2

Therefore, in accordance with the authority vested in me by 48 CFR 1.404, Class Deviations, I hereby grant a deviation, on a class basis to 48 CFR Subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program) and Part 52, Solicitation Provisions and Contract Clauses. This deviation will be implemented through an Acquisition Letter.

Approved:


Richard H. Hopf
Procurement Executive

6/11/98
Date

DOE Deviation to Implement the 8(a) MOU with SBA

Part 19 Small Business Programs

Subpart 19.800 General

Add subparagraph (d):

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal contracting activities. If an agency is covered by an MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts already awarded under the MOU.

19.803 Selecting acquisitions for the 8(a) Program.

Add 19.803-70 to read:

19.803-70 Simplified procedures for 8(a) acquisitions under MOUs

Contracting activities may use the simplified acquisition procedures of Part 13 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) Participants. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from the SBA are required.

(b) The contracting activity will use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.

(c) The contracting officer will issue the purchase order directly to the 8(a) firm.

(d) Once an 8(a) contractor has been identified, the agency contracting officer will establish the price with the selected 8(a) contractor and prepare and issue a purchase order or contract in accordance with the provisions of Part 13. The applicable clauses prescribed in 19.811-3 shall be included in the award document.

(e) The contracting officer will forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within 5 days after the order is issued.

19.804-2 Agency offering.

(a) When applicable, this notification must identify that the offering is in accordance with an MOU identified in 19.800.

19.804-3 SBA Acceptance.

Add new 19.804-70 which will read:

19.804-70 SBA Acceptance under MOUs for acquisitions exceeding \$100,000.

(a) Acceptance of requirements covered by MOU's on acquisitions that exceed \$100,000.

(1) The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 5 working days of receipt of the offer.

(2) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(3) SBA's acceptance letters should be faxed or e-mailed to the offering contracting agency.

(4) If the contracting activity has not received an acceptance or rejection of the offering from SBA within 5 days of SBA's receipt of the offering letter, the contracting activity may assume that the requirement has been accepted and proceed with the acquisition.

(b) The contents of SBA's acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

19.805 Competitive 8(a).

19.805-2 Procedures

Add to 19.805-2 new paragraphs (a) and (c)(3) to read as follows:

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see Part 13).

(c)(3) For requirements exceeding \$100,000 processed under an MOU cited in 19.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid requirements) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA will determine the eligibility of the firm(s) and advise the contracting officer within 2 working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer will submit information on the next low offeror or next apparent successful offeror to the cognizant SBA field office.

19.806 Pricing the 8(a) contract.

Add paragraph (a) to read:

(a) When required by Subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under an MOU cited in 19.800.

19.808-1 Sole source.

Add new paragraphs 19.808-1 (a) and (b) to read:

(a) If the acquisition is conducted under an MOU cited in 19.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 19.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in negotiations.

19.811-1 Sole Source.

19.811-1 Add new paragraph (d) to read as follows:

(d) If the award is to be made under an MOU cited in 19.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be prepared in accordance with the procedures that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253 (c)(5) and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) Appropriate contract clauses shall be included, as necessary, to reflect that the acquisition is an 8(a) contract awarded under the authority of an MOU cited in 19.800.

(3) The contracting activity shall include SBA's requirement number on the contract unless the acquisition does not exceed \$100,000.

(4) A single award document shall be used between the agency and the 8(a) contractor. As such, a single signature by the agency's contracting officer who is identified as having concurrent authority under an MOU cited in 19.800 to enter into 8(a) contracts will suffice (i.e. an SBA signature will not be required). The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "awarded to" or "contractor name" block on the appropriate forms.

19.811-2 Competitive.

Add paragraphs (a) and (b) to read as follows:

(a) If the award is to be made under an MOU cited in 19.800, competitive contracts for 8(a) firms will be prepared in accordance with the same standards as 8(a) sole source contracts. See 19.811-1.

(b) If the acquisition is conducted under an MOU cited in 19.800, the process for obtaining signatures shall be as specified in 19.811-1(d).

19.811-3 Contract Clauses.

Add paragraphs 19.811-3 (d)(3) and (f) to read:

(d)(3) The clause at 52.219-18 will be used with the Alternate (Deviation) at 52.219-18, when the acquisition is processed under an MOU cited in 19.800.

(f) The contracting officer shall insert the clause at 52.219-70XX, Section 8(a) Direct Award, in contracts and purchase orders processed under an MOU cited at 19.800; the clauses at 52.219-11, Special 8(a) Contract Conditions, 52.219-12, Special 8(a) Subcontract Conditions, and 52.219-17, Section 8(a) Award, shall not be used.

19.812 Contract administration.

Add 19.212 (d) to read:

(d) Awards under an MOU cited in 19.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause entitled, Section 8(a) Direct Award, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

Part 52

Solicitation Provisions and Contract Clauses

52.219-18 Alternate for acquisitions under 19.800 (Deviation) (June 1998)

When the acquisition is processed under an MOU cited in 19.800, substitute the following for the paragraph (c) in 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

52.219-70XX Section 8(a) Direct Awards.

As prescribed in 19.811-3(f), insert the following clause:

Section 8(a) Direct Award (June 1998)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Memorandum of Understanding between the Small Business Administration (SBA) and the Department of Energy (DOE). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

[To be completed by Contracting Officer at time of award]

(b) DOE is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, DOE shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. DOE shall also coordinate with SBA prior to processing any novation agreement. DOE may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

- (1) to notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.
- (2) to adhere to the requirements of 52.219-14, Limitations on Subcontracting.

(End of Clause)